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19
20   **UNITED STATES DISTRICT COURT**
            NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

21 CHASOM BROWN, *et al.*, individually and   Case No. 4:20-cv-03664-YGR-SVK
    on behalf of themselves and all others
    similarly situated,
22   **DECLARATION OF JONATHAN TSE IN**
                                                     SUPPORT OF ADMINISTRATIVE
23   Plaintiffs,   **MOTION TO SEAL PORTIONS OF**
                                                     PLAINTIFFS' NOTICE OF MOTION
24   v.   **AND MOTION TO EXCLUDE**
                                                     PORTIONS OF THE REBUTTAL
25 GOOGLE LLC,   **EXPERT REPORT OF KONSTANTINOS**
                                                     PSOUNIS
26   Defendant.

27   Judge: Hon. Yvonne Gonzalez Rogers

28

1   I, Jonathan Tse, declare as follows:

2   1.   I am a member of the bar of the State of California and an attorney at Quinn Emanuel

3   Urquhart & Sullivan, LLP, attorneys for Defendant Google LLC ("Google") in this action. I make

4   this declaration of my own personal, firsthand knowledge, and if called and sworn as a witness, I

5   could and would testify competently thereto.

6   2.   I am making this declaration pursuant to Civil Local Rule 79-5(e)-(f) as an attorney

7   for Google as the Designating Party, pursuant to Civil Local Rule 79-5(f)(3) in response to Dkt.

8   702.

9   3.   On August 23, 2022, Plaintiffs filed their Administrative Motion to Consider

10   Whether Google's Materials Should Be Sealed regarding Plaintiffs' Notice of Motion and Motion

11   to Exclude Portions of the Rebuttal Expert Report of Konstantinos Psounis. On August 23, 2022, I

12   received an unredacted service copy of these documents.

13   4.   The common law right of public access to judicial proceedings is not a constitutional

14   right and it is "not absolute." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *Crowe v.*

15   *Cty. of San Diego*, 210 F. Supp. 2d 1189, 1194 (S.D. Cal. 2002) ("[T]here is no right of access which

16   attaches to all judicial proceedings." (internal citations omitted)). In the context of dispositive

17   motions, materials may be sealed in the Ninth Circuit upon a showing that there are "compelling

18   reasons" to seal the information. *See Kamakana v. City & Cty. Of Honolulu,* 447 F.3d 1172, 1179-

19   80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must

20   show only "good cause." *Id.* at 1179-80. Courts in this District have held that motions to exclude

21   the testimony of experts are non-dispositive. *TVIIM, LLC v. McAfee, Inc.*, 2015 WL 3623656, at *4

22   (N.D. Cal. June 10, 2015) ("Because Plaintiff's motion to exclude testimony is not

23   a dispositive motion, the Court applies the "good cause" standard."). Such sealing is appropriate

24   when the information at issue constitutes "competitively sensitive information," such as

25   "confidential research, development, or commercial information." *France Telecom S.A. v. Marvell*

26   *Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen.*

27   *Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts' "broad latitude" to

28   "prevent disclosure of materials for many types of information, including, but not limited to, trade

secrets or other confidential research, development, or commercial information"); *Standard & Poor's Corp. Inc. v. Commodity Exch., Inc.*, 541 F. Supp. 1273, 1275 (S.D.N.Y. 1982) ("[T]he overriding interest to be found in business confidences . . . require[s] . . . temporary reasonably restricted access to the Courtroom of members of the public.").

5.   I have reviewed the documents that Plaintiffs seek to file under seal pursuant to Civil Local Rule 79-5(f). Based on my review, there is good cause to seal the following information:

Document(s) to be Sealed	Basis for Sealing
Plaintiffs' Notice of Motion and Motion to Exclude Portions of the Rebuttal Expert Report of Konstantinos Psounis Pages 2:19, 3:1, 3:13, 3:17, 3:24, 4:9, 5:23, 6:3-4, 6:18-19, 7:1-7, 8:4, 9:6, 9:9, 9:11, 10:5, 12:4, 12:17, 14:10 Google joins Plaintiffs' motion to seal in PART with respect to this document.	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types and counts of Google's internal logs, and their proprietary functionalities, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Declaration of Mark Mao In Support of Plaintiffs' Motion to Exclude Portions of the Rebuttal Expert Report of Konstantinos Psounis Pages 2:9, 2:14-15, 2:18 Google joins Plaintiffs' motion to seal in FULL with respect to this document.	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types and counts of Google's internal logs, and their proprietary functionalities, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of

	cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Exhibit A to Mao Declaration - Chart of Data Sources Google Identified as Relevant Seal Entirely Google joins Plaintiffs' motion to seal in FULL with respect to this document.	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types of Google's internal data signals and logs, and their proprietary functionalities, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Exhibit B to Mao Declaration - 8/19/22 Psounis Depo Transcript (full) Pages 59:17, 59:21, 59:25, 60:7, 60:14, 60:19, 61:5, 61:17, 63:4-5, 134, 22-23, 135:19, 135:21, 135:23, 135:25, 136:9, 157:15, 157:23-158:1, 158:3, 158:11, 158:18, 158:23, 159:7, 159:17, 159:23-24, 161:15, 161:17, 161:22-23, 161:25, 162:2, 162:13, 164:3, 164:6, 166:10, 166:22, 167:10, 167:18, 167:21, 167:25, 168:8-9, 168:21, 169:6, 169:8, 169:12, 169:17, 169:19, 169:23, 170:2, 170:4, 170:10, 170:22, 171:15, 171:17, 171:20, 171:23, 189:7, 189:22, 190:9, 190:21, 190:23, 191:4, 191:20, 191:23, 192:2, 192:18, 213:14-15, 216:4, 216:8-9, 230:9, 237:14-15, Index pgs. 20, 21, 51, 52	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types of Google's internal projects, data signals, and logs, and their proprietary functionalities, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.

Google joins Plaintiffs' motion to seal in PART with respect to this document.	
[Proposed] Order Granting Motion to Exclude Portions of the Rebuttal Expert Report of Konstantinos Psounis Pages 2:15, 2:17 Google joins Plaintiffs' motion to seal in PART with respect to this document.	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types and counts of Google's internal logs, and their proprietary functionalities, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.

6.   Google's request is narrowly tailored in order to protect its confidential information. These redactions are limited in scope and volume. Because the proposed redactions are narrowly tailored and limited to portions containing Google's highly-confidential or confidential information, Google requests that the portions of the aforementioned documents be redacted from any public version of those documents.

7.   Google does not seek to redact or file under seal any of the remaining portions of documents not indicated in the table above.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed in San Francisco, California on September 13, 2022.

By   /s/ *Jonathan Tse*
        Jonathan Tse

TSE DECLARATION ISO ADMINISTRATIVE MOTION TO SEAL